1949-50 **File No.** 8388/36-I

A CLASS P. W. DEPARTMENT & BRANCH (11)

Subject:— Government Servants.

Temp. and workcharged establishment.

Termination of the services of — with or — without one months notice.

V

11 K 11/50

E (11)

File No. 8388/36-1

Frd. Secl. Sl. p. 20-8

[G. R., G. D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET (B)

Subject :—

File No. 8388/36-I.

P. W. DEPT.

8 BRANCH. (11)

References :—

Date.	To whom sent.	Notes and instructions.

No.E-26/9154 of 1949.

Poona, 12th August, 1949.

To

The Secretary to Government,

Agriculture and Forests Department,

BOMBAY.

Subject:- Forefeiture of pay in lieu of Notice - clarification of -

M.R. Sadarangani, a displaced Government servant from West Pakistan was employed in this organization as a Headclerk on temporary establishment in the Ahmedabad Project Minor Irrigation Sub-Division under the usual conditions governing such appointments, one of which is the signing of the declaration in Public Works Department form 143(e), which inter alia includes one months notice of teminatin of service on either side.

Accordingly, Mr. Sadarangani tendered one month's notice on 31st March 1949 of his intention to resign his appointment which would normally have expired on 30th April 1949, but as he was relieved from service on 8th April 1949 B.N. at his own request, his pay and allowance for the unexpired portion of the notice period were ordered to be recovered from his dues, as is usual in such cases.

Mr. Sadarangani has however represented to me that according to the wordings in para 2 of the declaration in P.W.D. from 143 e, a speciment of which is enclosed herewith for the information of Government, he is required to forfeit only his 'pay' for the above period and not the allowance accuring on it, for he contends that 'pay' as defined under Rule 9(29) (a) of the Bombay Civil Services Rules Volume I, does not include the allowances he was in receipt of viz. Dearness allowance, Compensatory allowance and House Rent.

As Mr. Sadarangani has mised a technical point on the word 'pay' as used in the declaration, I have to request clarfication..

clarfication from Government in the matter whether it can be construed to mean 'pay' as defined under Rule 9 (39) (a) of the Bombay Civil Services Rule or whether for the purpose of notice and subsequent forfeiture in lieu thereof, it does include allowances that acruet on it. In the former case, I recommend that Government may kindly be moved to substitute the word 'pay' occuring in para 2 of the declaration by 'emoluments' to cover this contingency, as I feel that in the case of forfeiture in lieu of notice period, as temporary Government Servant ought to pay Government all the emoluments he would normally have received by way of pay and allowance, had he continued in service during the notice period.

Favour of early orders of Government in the matter is requested.

Encl:-

1 Form P.W.D. 143 (e)

Sd/-

Joint Director of Agriculture (Eng).,

Bombay Province, Poona.

B.R.,P.W.D.No. 8388/36.dated May '50.

DECLARATION

(To be signed by employees on the Temporary Establishment of the Public Works Department as required by Rule 88 of the Bombay Public Works Department Manual Vol.I Second editor).

I hereby declare that I clearly understand that my employment in the office of the Engineer as on the Temporary Establishment is on the footing of a monthly servant, and carries with it absolutely no claim to pension or to any absentee allowance, beyond those conditionally given to temporary employees under the Bombay Civil Services Rules Manual or any orders on the subject issued by Government from time to time.

2. If dismissed otherwise than for serious misconduct before the completion of the work, I will be entitled to a month's notice or a month's emoluments in lieu of notice but otherwise, with or without notice, my employment terminates when the work ends. If I desire to resign my appointment I will be required to give a month's notice of my intention to do so, or forfeit a month's emoluments in liew of such notices.

Dated 1945.

Witness-

Dated 195

8388/36

E.B.(II) P. W. D.

The Jt.Dir. of Agri. (Eng.) reports that Mr. R.K. Sadrangani, Head Clerk on tempy, estabt. in the A'bad Project Minor Irrign. Sub-Dn., tendered one month's notice on the 31-3-49 of his intention to resign his appointment. As he was relieved on the 8-4-49 (B.N.) at his own request, his pay and allowances for the unexpired period of notice were ordered to be recovered from his dues. Mr. S. has, however, objected to the forefeiture of his allowances on the ground that he is entitled to his forefeiture of his pay only for the above period according to the wording in para 2. of the declaration from. The Jt.Dir. therefore requestes clarification in the matter and suggests the substitution of the word 'emoluments' for the word 'pay' occuring in para. 2 of the form, if necy.

2. It is for orders whether the word 'pay' as defined under Rule 9 (39) (a) of the B.C.S.R.Manual, Vol.I, can be interpreted to include the allowances also that acure on it for purposes of notice and subsequent forfeiture in lieu thereof. As this is a matter of common interest views of other local officers may be called for in the matter, if appd. Necy. draft will be put up on receipt of orders.

Id/-

19-9-49.

Even though the subject Minor Irrigation has been transferred to this Deptt., this case cannot possibly be transferred to the P.W.D. as it pertains to a tempy. clerk engaged by the Jt.Director of Agr. (Engineering) direct. Besides none of the M.I.Divisions is being transferred to this Deptt. Since it is to be renamed as Lift.Irr. Dn. A & F.D. may therefore deal with this case.

Id/- K.V.J.

19-9-49

U.....

U.O.R. to the A.F..D.. dt. 27-9-49.

A.&F.D.

The P.W.D. may be requested to transfer this case to this Deptt.

Id/-

28-9-49.

Id/-

28-9-49.

U.O.R. to P.W.D. dated 29-9-1949.

A. & F.D.

The question raised in these papers is whether pay as defined under Rule 9(39)(a) of the B.C.S. R.sVol.I. can be interpreted to include the allowances. Mr.R.K.Sadarangani, Head Clerk on the temporary estt. in the A'bad Project/minor irrigation sub-dn. tendered one month's notice on the 31st March, 1949 of his intention to resign his apptt. He was relieved at his own request on the8th April, 1949, B.N. though normally he was entitled to leave on the 30th April, A.N. his pay and allowances for the unexpired portion of the Notice were ordered to be recovered from his dues. Mr. Sadarangani has objected to the recovery of allowances, accuring on the pay. According to 9(39) (a) of the B.C.S.R. Pay means the amount drawn by a Govt. servant as pay, overseas pay, etc and any other emoluments which may be specially classed as pay by Govt. It is therefore evident that the Jt.Dir's action in recovering Mr. Sadarangani's pay with allowances accuring on it was not incorrect as' other emoluments' can be classified to include the pay. As the point raised is however, not free from doubt and of a general nature, the F.D. may first be asked to advise.

Id/-

5-11-49

F.D. may advise.

2. If F.D. agrees Govt. may not insist on recovery of the amount for the unexpired portion of the notice period. The Condition of one month's notice may not be strictly enforced. As a matter of grace Mr. S. may also be paid his pay and allowances from 1st to 8th April 1949, especially since the post was temporary.

Id/-

5-11-49.

U.O.R. to F.D. dt. 5th Novr. '49.

Finance Pt. B

Pl. See the A. & F.D. office note dated 5-11-1949 and the A.S's note below it.

2. Pay as defined in B.C.S.R.9 (39) (a) does not include allowances. It, however, appears that the present case cannot be decided merly on the basis of definition of pay given in the B.C.S.Rs. but has to be dealt with in the light of precedents. It is possible that similar instances may have occured in the past in the P.W.D. and it seems necessary to know how the word 'Pay' is being interpreted. The pp. may therefore be referred U.O. to the P.W.D. for favour of remarks with ref. to precendents, if any. That dept. may be requested to state below the word "Pay" occuring in the declaration from on page 3 is being intergreted and whether the terms of declaration so far as they relate to the recovery of pay in lieu of due notice are strictly enforced in practice.

Id/-

U.O.R. to P.W.D. dated 24-11-1949.

A.& F.D. 2347/60323

79451

E.S.(II). P.W.D.

Submitted.

2. Although no concrete instances can be quoted, the the word pay, as this office is aware, is inclusive of allowances.

3. It is, however, possible that the local officers may interpret it differently . It will be necessary to call for-

or the views of the local officers and to request them
o state that practice has been followed by them. It is
ar consideration whether this may be done.

Id/-

2-11-49

Yes.

Id/- K.V.J.

30-11

D.S.

E.B.(II). P. W.D.

These pps. may be retd. to the A.& F.D. (after keeping copies of relevant notes) with an intimation that the views of the local officers are being called for separately. The remarks of this Deptt. will be communicated to the A.& F.D. on receipt of the report of the local officers.

Id/-

3-12-49

Id/- K.V.J.

3-12

D.S.

U.O. to A. & F.D. (after copies of pages 1,3,9-10 and 13-16). dt. 8-12-49.

Id/-

8-12-49.

Letter.

No.8388/36-E(II). Public Works Department,

Bombay Castle (Bombay No.1),

12th December 1949.

To

The Electrical Commissioner with the Government of Bombay.

The Superintending Engineers of Circles.

The Electrical Engineer to Government.

The Public Health Engineer to Government.

The Architect to Government.

Subject:- Forfeiture of pay in lieu of notice.

.....

Reference: Letter No.E[illegible]/9154, dated the 12th Agust 1949, from the Joint Director of Agriculture to the Secretary to Government, Agriculture and Forests Department (copy enclosed).

2. You attention is invited to the Declaration From to the be signed by employees on the Temporary Establishment of the Public Works Department as required by rule 970 of the Bombay Public Works Department Manula (Old Edition). Please state how the word "pay", occuring therein, is interpreted by you and what practice has been followed by you in recovering pay in lieu of the notices. It should be made clear whether the term pay also includes other allowances and if so which?

By order of the Governor of Bombay,

Sd/-

K. V. Jeglekar,

Deputy Secretary to the Government

of Bombay, Public Works Department.

D.A.- Copy of the

letter refd. to.

Copy forwarded to the Agriculture and Forests Department, for information.

Id/-

15-12-49.

8368/36/33223.

P. W. Deptt.

E. B. (II).

The last sentence of the "Declaration form" to be signed by the tempy. employees in the P.W.D. runs as under:-

"If I desire to resign my apptt. I will be required to give a month's notice of my intention to do so, or forfeit a month's pay in lieu of such notices".

The A. & F.D. has inquired the exact interpretation of the word "pay", i.e. whether only pay should be forfeited or whether "pay and other allowances" such as "Dearness allowance", "C.I.A.", "H.R.A.", etc. should also be forfeited.

2. This question was discussed in the year 1948 and it was then decided that the word "pay" should be held to convery the same meaning as that defined in rule 9(39) of the B.C.S.Rs., Vol.I (According to this meaning the word "pay" will not include "allowances".

3. It was however thought that the local officers may interpret the word "pay" differently. Accordingly in G.L.No. 8388/36-E(II), dated the 22-12-1949, the local officers under the P.W.D. were asked to state - (1) how the word "pay" was interpreted and (2) what practice has been followed in recovering pay in lieu of notice. The local officers were also asked to state whether the term "pay", included other allowances.

From the replies received from the local officers it is seen that -

(a) The Kl.Commr. interpretes "pay" as pay pupper i.e. exclusive of allowances;

(b) The S.Es., N.C.C., Kayma I.C. and S.C., state that "pay" is taken to mean only pay as defined in B.C.S.R.9(39) (a) but in actual practice all allowances in addition to pay are recovered;

(c) In the C. C. "pay" is interpreted to mean pay and Dearness allowance;

(d) Other local officers have stated that the word 'pay' should include all allowances also

(e) The practice followed in almost all the Circle is however

to.....

to recover pay, dearness, allowance, C.I.a., H.R.A. etc. in lieu of notice. Thus there is no uniform practice in interpreting the word "pay".

4. A majority of local officers have suggested that the word "pay" may be substituted by the word "emoluments". When this is done it will include "pay", dearness allowance, C.I.A., h.r.a., etc.

5. It appears that if the word "pay" is substituted by the word "emoluments" the question will be resolved. This will, however, mean to modify the orders issued in G.L.No. 9972/27-E, dated the 13-12-1935.

Id/-
5-5-50

As at 'A'

Id/-
6-5-50

I see no need for a change in the existing orders, which are clear and should only be asked to be followed.

Id/-
12-5

Id/-
6-5

In the context of a pension giving a month's notice &, in case of failure to given notice, forfeiting his claims to recover monies from Govt., I think the proper expression should be "emoluments" or monthly" pay & allowances, & or merely 'pay', exclusion of cost of L.A, house rent a (dearness allce) etc.

There seems no logic in forfeiting 'pay' only.

I think the condition should be amended accordingly.

Civil service Regulations, in this connection, mention "emoluments" (art. 436) and the intention seems to a clear to forfeit all emluments & not merely 'pay'. and wages (art 352)

F.D. may see

Id/-
8-5

I.O. to F.D. (with file No.9972/27), dt. 9-5-50.

Id/-
12-5

Finance Deptt. B

Seen and returned to the P.W.D.

2. The view expressed by Secy. P.W.D. seems to be quite logical and F.D. may agree that the condition in question should be amended as suggested.

Id/-

18-5

Id/-

11-5

D.S.(S) U.o.r. to P.W.D. dated 11-5-1950

S388/36/37761

P. W.D.

E.B.(II).

The F.D. having agreed, the draft put up may issue after u.o.r. to the L.S.G.& P.H.D.

Id/-

13-5-50

Id/-

18-5-50

U.o. to L.S.G. & P.H.D. (with file No. 9972/22)

L.S.G. & P.H.D.

Seen to returned to P.W.D.

Id/-

29-5-50

Id/-

31-5-50

Id/-

29-5-50

Id/-

5-6-

U.o.r to P.W.D. (with P.W.D.file 9572/27) dt 2-6-50

For revised orders pl.see F.D., P.W.D., No. BAR.1051. dated the 1-11-51.

Temporary Establishment:
Form of declaration for the-
Revision of -

GOVERNMENTXX OF BOMBAY.

Public Works Department.

Resolution No.8388/36.

Bombay Castle (Bombay No.1), 7th June 1950.

Read Government Memorandum, Public Works Department, No.9972/2[illegible]-E, dated the 13th December 1935.

Read Letter No.2887, dated the 24th April 1950, from the Superintending Engineer, South Gujarat Circle.

Resolution:- Government is pleased to direct that persons appointed to the temporary establishment under the Public Works Department should be required to sigh the accompanying declaration forms in lieu of the existing form.

2. The revised form of the declaration of temporary employees should be substituted for the existing form No.P.W.D.143 e.

By order of the Governor of Bombay,

Sd/- K.V. Joglekar,
Deputy Secretary to Government.

To The Finance Department,
The Agriculture and Forests Department.
The Labour and Housing Department.
The Local Self-Government and Public Health Department.
The Accountant General, Bombay.
The Deputy Accountant General, Baroda.
The Chief Engineer, Public Works Department.
The Electrical Commissioner with the Government of Bombay.

The.....

The Superintending Engineers of Circles.

The Electrical Engineer to Government.

The Architect to Government.

The Director, Development Department Chawls.

The Executive Engineers of Divisions.

The Secretary, Bombay Housing Board.

The Superintending, Government Printing and Stationary, Bombay.

The Manager, Government Central Press.

No. of 1950.

Copy forwarded for information and guidance to

Printed as an accompaniment to this Resolution.

P.W.D.T 21

No. stamp to F.D. & L.S.G. & P.H.D.

Accompaniment to Government Resolution, Public Works Department, No.8388/36, dated the 7th June 1950.

DECLARATION.

(To be signed by employees on the Temporary Establishment of the Public Works Department as required by Rule 68 of the Bombay Public Works Department Manual, Volume I, Second Edition.)

I hereby declare that I clearly understand that my employment in the office of the Engineer on the Temporary Establishment is on the footing of a monthly, servant, and carries with it absolutely no claim to pension or to any absentee allowances, beyond those conditionally given to temporary employees under the Bombay Civil Services Rules Manual or any orders on the subject issued by Government from time to time.

2. If dismissed otherwise than for serious misconduct before the completion of the work, I will be entitled to a month's notice or a month's emoluments in lieu of notice by otherwise, with or without notice, my employment.....

employment terminates when the work ends. If I desire to resign my appointment I will be required to give a month's notice of my intention to do so, or forefeit a month's emoluments in lieu of such notice.

Dated 195

Witness

Dated 195

Id/-
21-6-

Issued
21-6-

To
E.B.(I) for information
with a copy.
Id/-
22-6-50

Copy retained, thanks.
Id/-
22-6-50

To
E.B.II.